Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Access Charge Reform	)	CC Docket No. 96-262
	)	
Price Cap Performance Review for Local Exchange Carriers	)	CC Docket No. 94-1
	)	
	)	
	)	RM-9210

COMMENTS OF RCN TELECOM SERVICES, INC.

RCN Telecom Services, Inc. ("RCN"), respectfully submits the following comments in response to the October 5, 1998 Public Notice requesting comments in the above-captioned proceedings.[1]

I. INTRODUCTION

RCN, by itself and through various affiliations, is a facilities-based competitive provider of local exchange and long distance telephone services, high-speed Internet access, and traditional franchised cable and/or OVS services, primarily to residential subscribers. RCN employs a variety of technologies to offer these services in direct competition with many of the nation's largest, most well-established telephone and cable incumbents. RCN's business plan

[1] *Commission Ask Parties to Update and Refresh Record For Access Charge Reform and Seeks Comment on Proposals For Access Charge Reform Pricing Flexibility*, Public Notice, FCC 98-256, released October 5, 1998.

emphasizes the residential market and is structured to offer consumers a combination of local exchange and long distance telephone service, high-speed Internet access, and traditional cable or OVS services in one bundled offering. Generally, RCN offers these services, both in a package or individually, at competitive rates.

II. CONSIDERATION OF PRICING FLEXIBILITY IS PREMATURE

RCN submits that it is premature at this point to consider establishing pricing flexibility for incumbent LECs. As other commenters in this proceeding have pointed out competitive LECs had less than 1.4% of total switched access revenues in 1997.[2] Less than 0.02% of all buildings are connected to CLEC networks.[3] In addition, RBOCs have approximately 99% of switched access lines[4], and incumbent LEC facilities dwarf CLEC facilities.[5] By any measure, competitive LECs have only a very small percentage of the local market.[6]

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[2] *1998 Annual Report on Local Telecommunications Competition*, 9th Edition, New Paradigm resources Group, Inc., Chapter 4, Table 5, at 8.

[3] Letter to Secretary, Federal Communications Commission, from Donald H. Sussman, MCI Telecommunications Corporation, May 15, 1998, page5, citing MCI market research.

[4] Letter to Secretary, Federal Communications Commission, from Donald H. Sussman, MCI Telecommunications Corporation, May 15, 1998, page 3, citing MCI market research.

[5] As of 1996, incumbent LECs had installed 12.3 million miles of fiber whereas CLECs had installed only 1.3 million miles of fiber. *1997 Statistics of Communications Common Carriers*, Common Carrier Bureau, Federal Communications Commission, December 5, 1997, Table 12.

[6] Collectively, CLECs captured 5.1% of the business market for local telecommunications services in 1997. *United States Competitive Local Markets*, Strategis Group (1998). In 1996 the CAP/CLEC share of nationwide local service revenues, including local exchange and access services, was 1%. Industry Analysis Division, Telecommunications Industry Revenue: TRS Fund Worksheet Data (rel. Nov. 1997).

Moreover, the regulatory assumptions underpinning pricing flexibility have been invalidated. In the *Access Charge Reform Order,*[7] the Commission assumed that its pricing guidelines and other determinations in the *Local Competition Order*[8] implementing the key market-opening provisions of the 1996 Act would set the stage for competition in provision of interstate access services. It therefore adopted a "market based" approach to achieve its goals for access reform that would rely on the development of competition to force access rates toward levels based on forward looking economic costs.[9] However, the Commission's assumption has been invalidated by the decision of the 8th Circuit in *Iowa Utilities Board* vacating the Commission's pricing guidelines for unbundled network elements ("UNEs") and its requirement that incumbent local exchange carriers provide combined UNEs. RCN submits that *Iowa Utilities Board* and the very small competitive presence of competitive LECs eliminate any rational basis for proceeding with pricing flexibility.

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[7] *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charges*, Report and Order, CC Docket Nos. 96-262, 94-1, 91-213, and 95-72, 12 FCC Rcd 15982 (1997) aff'd sub nom. Southwestern Bell Tel. v. Co. FCC, No. 97-2618 (8th Cir. Aug. 19, 1998); Price Cap Performance Review for Local Exchange Carriers, CC Docket 94-1, 12 FCC Rcd 16642 (1997), appeal pending sub nom. USTA v. FCC, No. 97-1469 (D.C. Cir.) ("*Access Reform Report and Order*").

[8] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499, 15805-15806, paras. 694-606 (1996) (*Local Competition Order*), *vacated in part, aff'd in part*, Iowa Utils. Bd. v. FCC, 120 F.3d 753 (8th Cir. 1997), *cert. granted on other grounds sub nom.* AT&T Corp. v. Iowa Utils. Bd., 118 S.Ct. 879 (1998).

[9] *Access Reform Report and Order* para. 264.

As the Commission envisioned in the *Access Reform Report and Order*, it will not be appropriate to deregulate incumbent LECs until "competition has developed to such an extent that the market will ensure just and reasonable rates."[10] While incumbent LEC compliance with the key market opening provisions of the 1996 Act should be a precondition of pricing flexibility, there should additionally be widespread vigorous actual competition occurring in the marketplace before any pricing flexibility is granted.

RCN urges the Commission to seek to establish a more thorough implementation and enforcement of the key interconnection, unbundling, and resale obligations of Section 251(c) of the Act.[11] This would be most consistent with the goals of the 1996 Act and could provide the foundation for eventual consideration of pricing flexibility.

III. THE BELL ATLANTIC AND AMERITECH PROPOSALS DO NOT PROVIDE A BASIS FOR ESTABLISHING PRICING FLEXIBILITY

The brief bullet presentations submitted by Bell Atlantic and Ameritech on which the Public Notice requested comment do not provide a clear or complete explanation of these carriers' pricing flexibility proposals. It appears, however, that these proposals would significantly depart from the Commission's conception of the basis for granting pricing flexibility. They would also establish sweeping pricing flexibility based on extremely modest levels of competition. Accordingly, the Commission should reject these proposals.

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10 *Access Reform Report and Order* at para. 273.

11 47 U.S.C. Section 251(c).

A. Failure to Establish the Preconditions of Competition.

In the *Access Reform NPRM*, the Commission proposed that the initial stages of pricing flexibility would be established once incumbent LECs had complied with key market opening requirements and barriers to competition had been removed.[12] However, the Bell Atlantic and Ameritech proposals would not make removal of barriers to entry the foundation for granting pricing flexibility. Thus, these carriers do not propose that the first stage of pricing flexibility be founded on a demonstration of compliance with the key market opening provisions of the Act. Instead, initial pricing flexibility would be based on criteria that could not reasonably be assumed to show that barriers to competition have been removed and/or the existence of only a very small amount of competition.

Bell Atlantic and Ameritech apparently are proposing that pricing flexibility for transport services be based on the existence of 100 DS1 connections somewhere in the state or LATA and that switched access pricing flexibility be based on the existence in a state of a negotiated interconnection agreement or a statement of generally available terms ("SGAT"). Bell Atlantic would additionally add the availability of interim number portability and 100 UNE loops being in service for switched access pricing flexibility.

These proposals at best constitute symbolic gestures toward taking the key steps envisioned under the Act that would genuinely make widespread competition possible. Thus, there is no proposal for a thorough presentation by these carriers of compliance with a suitable

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[12] *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charges*, Notice of Proposed Rulemaking, CC Docket Nos 96-262, 94-1, 91-213, and 95-72, 11 FCC Rcd 21354, para. 161 (1996)("*Access Reform NPRM*").

set of competitive standards. The Bell Atlantic and Ameritech proposals make no reference to any of the key obligations that the Act envisions could set the stage for competition, such as the competitive checklist in Section 271. The existence of a single negotiated or state approved interconnection agreement or an SGAT would be a pale substitute for an actual demonstration of compliance with key market opening requirements. Simply stated, interconnection agreements and SGATs do not show a full compliance with the key market opening requirements of the Act because they can be considerably narrower than what would constitute full removal of barriers to entry. Thus, they do not necessarily encompass safeguards that could assure reasonable and effective access to incumbent LECs' Operational Support Systems and reasonable terms and conditions of collocation. Therefore, these proposals do not envision that the preconditions of competition would be in place prior to granting pricing flexibility.

B. The Proposals Would Grant Pricing Flexibility Prior to Significant Competition

The degree of competition envisioned by Bell Atlantic and Ameritech as triggers for Phase I pricing flexibility is so small that it should not be given any regulatory significance. The existence of 100 DS1 equivalent cross connects somewhere in the state is not a reasonable basis for assuming there is any significant degree of competition in a state or LATA. Similarly, the existence of SGATs or a negotiated agreement does not show that any competitive services are actually being provided. Bell Atlantic's 100 UNE loops in service somewhere in the state or LATA is absurd if intended to show that a significant degree of competition exists.[13] Nor does

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[13] The Commission should not follow its past approach to de-averaging special access and switched transport services under which de-averaging is permitted if one cross-connect has been taken in a study area. *Special Transport Expanded Interconnection Order*, 7 FCC Rcd at 7454 -55; *Switched Transport Expanded Interconnection Order*, 8 FCC Rcd at 7426

the existence of 100 DS1 cross-connects or 100 UNE loops in service somewhere in a state or LATA show significant compliance with the Act. Each of these criteria could easily be met by most ILECs long before any real competitive forces exist to constrain their pricing.

RCN submits that the Commission should not permit any pricing flexibility on the basis of the limited competition envisioned in the Ameritech and Bell Atlantic proposals. Given the truly modest percentage of the local service market provided by CLECs, it is simply far to early to consider establishing pricing flexibility. Instead, as noted, the Commission is most likely to achieve the goals of the 1996 Act by seeking to establish a complete implementation and enforcement of the 1996 Act.

C. The Proposed Deaveraging Is Too Broad.

Bell Atlantic and Ameritech apparently envision under their proposals that once the meager triggers they set forth are met anywhere in a LATA or state they would be granted pricing flexibility throughout the LATA or state. These triggers, such as 100 DS1 cross connects or 100 UNE loops, could be met in one or a few central offices, or a single office building, respectively. Thus, the geographic de-averaging contemplated in Phase I would apparently permit incumbent LECs to de-average prices in all density zones throughout a state even though there would be competition in only a tiny portion of the state. Similarly, these proposals would permit complete de-averaging of transport and switched access rates throughout a state or LATA even if virtually all competition is occurring in a very small area of the state. RCN submits that

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n. 230. This test does not show any significant degree of competition or compliance with the Act. RCN submits that this test has been superseded by, and is not the best way to achieve, the goals of the 1996 Act.

it would not promote the Commission's goals to grant the sweeping relief sought on the basis of the limited competition envisioned in Ameritech's and Bell Atlantic's proposals. Thus, in the *Access Reform NPRM* the Commission proposed not to rely on a statewide analysis of competition.[14] The Commission should reject these proposals because they do not sufficiently link the relief sought to the areas where the proposed triggers for de-averaging are occurring.[15] Absent this linkage, carriers will merely raise rates in areas where there is limited competition to make up for reductions in areas where there is some competition.

D. Volume and Term Discounts.

As with proposed deaveraging, RCN believes that the Ameritech and Bell Atlantic proposals to permit volume and term discounts, competitive responses to RFPs, and contract tariffs are not justified by the meager showings of evidence of compliance with the Act or of actual competition proposed by these carriers. Thus, it would not be appropriate to permit carriers to establish these discounted offerings throughout a state or LATA based on a showing of competition in a narrow area.

Moreover, the carriers' proposals omit key safeguards. Ameritech and Bell Atlantic do not address whether they plan to use discounts, RFPs, and contract tariffs to create head room under price caps so that they could raise rates for customers that do not receive discounts. Moreover, they do not address the extent to which these discounted offerings would be available to other customers. Nor do Ameritech and Bell Atlantic address what time limits would be

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[14] *Access Reform NPRM* para. 155.

[15] Bell Atlantic's proposal does apparently have some limits on pricing flexibility for transport based on wire centers.

placed on these discounted offerings. Incumbent LECs will use these offerings to "lock-up" customers absent time limits on the terms of these contracts. Accordingly, the Commission should limit the time period of any discounts or contract tariffs.

Ameritech and Bell Atlantic have additionally not adequately justified growth discounts. RCN believes that these would primarily benefit BOC long distance affiliates who, once authorized under Section 271, could have significant growth. Ameritech and Bell Atlantic have also not addressed the extent to which they should be required to publish the terms and conditions of service they intend to propose in response to an RFP. This should be required by the Commission because it could significantly promote competition by permitting other carriers to offer customers a more desirable offering.

III. CONCLUSION

For these reasons, RCN requests that the Commission not adopt pricing flexibility at this time. In addition, RCN submits that the approach to pricing flexibility reflected in the Bell Atlantic and Ameritech proposals would preserve carriers ability to control the pace of competition by leaving in place less than full compliance with the Act. This would be a very bad

bargain for the Commission to accept. Instead, if the Commission proceeds with a pricing flexibility approach to access reform, it should require that incumbent LECs demonstrate full compliance with a suitable competitive checklist. A far greater degree of actual competition should also be required before any pricing flexibility is granted.

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